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May 5, 2017

Ms. Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

**Re: Response to March 20, 2017 Letter and Request for Pre-
Probable Cause Conciliation — MUR 7221 (Kevin O'Dell)**

Dear Ms. Stevenson:

We write on behalf of our client Kevin O'Dell in response to the Commission's letter dated March 20, 2017. Mr. O'Dell respectfully requests that the Commission engage in pre-probable cause conciliation to resolve this matter.

Kevin O'Dell is the former Vice President for Human Resources & Safety for Mepco LLC. On January 29, 2014, Mr. O'Dell made a *sua sponte* filing with the FEC. In that filing, he explained that, prior to November 2013, he reported directly to Mepco's then-CEO James Laurita, Jr. Beginning in 2010, the *sua sponte* filing explained, "Mr. Laurita, either directly or through intermediaries," asked Mr. O'Dell and others "to make political contributions in suggested amounts to specific candidates and assured them that they would receive direct payroll deposits that would cover the amount of the suggested contribution(s)." The *sua sponte* filing further explained that, "pursuant to these instructions," Mr. O'Dell and others "made political contributions and accepted payroll deposits which were intended to reimburse them for, or pay them in advance for" these contributions.

Given the extensive factual record, Mr. O'Dell's *sua sponte* filing, and the likelihood that the Commission and Mr. O'Dell can agree on the violation and facts, pre-probable cause conciliation is appropriate here. Pursuant to the Office of General Counsel's Enforcement Manual, pre-probable cause conciliation is appropriate where further investigation is not necessary, the facts are sufficient to establish a violation of the Act, and it is likely the respondent and Commission can agree on the violation and facts. See FEC, *Guidebook for Complainants and Respondents on the FEC Enforcement Process* 14, 16-17 (May 2012); FEC,

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OGC Enforcement Manual 77 (June 2013). Moreover, the Commission's Sua Sponte Policy states that the Commission will provide "appropriate consideration" to those who make *sua sponte* filings including, where appropriate, by "offer[ing] conciliation before a finding of probable cause to believe a violation occurred." 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

All of these factors are present here. Mr. O'Dell has cooperated fully in both Mepco's internal investigation of this matter and in the government's investigation. He admitted to his actions *sua sponte* and has been fully forthcoming. Given the extensive document productions that have already taken place (over 8,000 pages produced), further investigation is not necessary. The facts as admitted in the *sua sponte* filing are likely sufficient to establish a violation of the Act (but not a knowing and willful one) and Mr. O'Dell believes that it is likely that he and the Commission can agree on the violation and facts. Furthermore, continuing the investigation or making a probable cause finding would not encourage cooperation or *sua sponte* reporting by future respondents.

Entering into pre-probable cause conciliation would also be consistent with the Commission's practice in these matters. The Commission regularly enters into pre-probable cause conciliation in contribution in the name of another cases, especially with subordinate employees who, like Mr. O'Dell, acted at the direction of their employers in making reimbursed political contributions. See, e.g., MUR 5041 (Wuesthoff Memorial Hospital) Conciliation Agreements of Rebecca Colker (Feb. 21, 2001) and Terence Murphy (May 4, 2001); MUR 5305 (Herrera for Congress) Conciliation Agreement of Nadine Giudicessi and James A. Bevan (Sept. 30, 2005); MUR 5453 (Giordano for United States Senate) Conciliation Agreement of William Wittman (Dec. 5, 2005). Even after finding reason to believe that the alleged violation was knowing and willful—a finding the Commission did not make with respect to Mr. O'Dell—the Commission has agreed to pre-probable cause conciliation. See, e.g., MUR 5405 (Hynes for Senate) Conciliation Agreement (Apr. 27, 2005); MUR 5453 (Giordano for United States Senate) Willsey Conciliation Agreement (Oct. 12, 2005); MUR 5366 (Edwards for President/Tab Turner) Turner Conciliation Agreement (June 21, 2006).

Accordingly, because Mr. O'Dell's case is not materially different from the many other matters in which the Commission has approved pre-probable cause conciliation for employee conduits and because all of the factors the Commission considers when assessing whether to enter into pre-probable cause conciliation are present, pre-probable cause conciliation is appropriate here.

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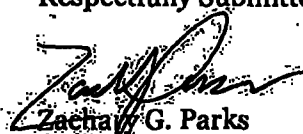
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Mr. O'Dell would be pleased to consider any requests from the Commission for additional information that might assist it in resolving this matter through pre-probable cause conciliation.

Respectfully Submitted,



Zachary G. Parks

Andrew D. Garrahan

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Counsel to Kevin O'Dell

cc: Ms. Jin Lee
Mr. Nicholas Mueller

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